

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KEYSTONE CUSTOM HOMES, INC.,

Case No.

Plaintiff,

v.

DEMAND FOR JURY TRIAL

HEARTHSTONE HOMES, INC. and
CHRISTOPHER J. NASO,

Defendants.

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff Keystone Custom Homes, Inc. (“Keystone” or “Plaintiff”) avers the following as and for its Complaint for Copyright Infringement against Defendants Hearthstone Homes, Inc., (“Hearthstone”) and Christopher J. Naso (“Naso”) (collectively, “Defendants”):

PRELIMINARY STATEMENT

1. Plaintiff brings this action seeking to put an immediate stop to, and to obtain redress for, Defendants’ blatant and purposeful infringement of Plaintiff’s rights in and to certain copyrighted architectural works authored, designed, created, and owned entirely by Plaintiff.

2. The architectural works in question are memorialized in architectural plans and designs that Plaintiff has titled “Samson,” along with homes that Keystone has built utilizing such plans and designs. Plaintiff registered the Samson plans and designs with the US Copyright Office under Registration No. VA 2-057-007. A true and correct copy of Plaintiff’s Certificate of Registration is annexed hereto as **Exhibit A**.

3. Keystone completed the Samson designs and plans in 2005, and first published them – i.e., made homes utilizing such designs and plans available to the public for purchase – on January 31, 2005.

4. In or before January of 2006, Keystone published a brochure on its website containing illustrations of homes built using the Samson designs, along with portions of the Samson architectural plans. The brochure featuring these illustrations and plans (the “Samson Brochure”) contains a copyright notice. A true and correct copy of the current version of the Samson Brochure, which in all material respects mirrors the brochure published in 2006, is annexed hereto as **Exhibit B**.

5. In the time since Keystone first published the Samson Brochure on its website, Defendant Hearthstone, owned and controlled by Defendant Naso, built and sold at least one home utilizing an exact or nearly exact copy of the Samson architectural design, and did so without seeking or obtaining permission or authorization of any kind from Plaintiff. Such conduct constitutes a violation of Plaintiff’s exclusive rights as copyright owner.

6. Defendants’ conduct is causing, and unless immediately enjoined will continue to cause, enormous and irreparable harm to Plaintiff. Defendants’ conduct must immediately be stopped, and Plaintiff must be compensated for Defendants’ willful acts of infringement.

JURISDICTION AND VENUE

7. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, et seq.

8. This Court has subject matter jurisdiction over this copyright infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Defendants because, among other things, Defendants are doing business in the Commonwealth of Pennsylvania and in this judicial district and elsewhere, the acts of infringement complained of herein occurred in the Commonwealth of Pennsylvania and in this judicial district and elsewhere, and Defendants have caused injury to Plaintiff and Plaintiff's intellectual property within the Commonwealth of Pennsylvania and in this judicial district.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), and/or §1400(a).

THE PARTIES

11. Plaintiff Keystone Custom Homes, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 227 Granite Run Drive, Suite 100, Lancaster, Pennsylvania 17601.

12. Keystone is one of the top home builders in the nation as ranked by the industry's leading trade journal, Builder Magazine. Keystone is well known in the Pennsylvania area for its expertise in designing and building custom homes.

13. Defendant Hearthstone is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 1503 Meadowlark Road, Wyomissing, Pennsylvania 19610.

14. Defendant Naso is president of Hearthstone. He is a resident of Reading, Pennsylvania.

15. Defendant Hearthstone builds custom homes in the Pennsylvania area, and is a competitor of Plaintiff Keystone.

STATEMENT OF FACTS

Keystone's Work, Industry Recognition, Charitable Contributions, and Architectural Designs

16. Since its founding in 1992, Keystone has grown into the largest independent homebuilder in the central Pennsylvania area. It designs and constructs custom homes in both Pennsylvania and northern Maryland.

17. Keystone is widely respected in the home building and architectural industries, and has three times been named America's Best Builder – considered one of the most prestigious awards a home builder can receive – by Builder Magazine in conjunction with the National Association of Home Builders.

18. The America's Best Builder award is judged based upon outstanding achievement in five categories: (a) finances and operations; (b) customer service and quality; (c) community and industry service; (d) design and construction; and (e) marketing.

19. Keystone is the first builder to ever be given this prestigious award three times.

20. In addition to being nationally recognized for the quality of its homebuilding, Keystone is also dedicated to public service.

21. Keystone donates a percentage of the profit from each home it sells to HOPE International, a non-profit charitable network of microfinance institutions founded in 1997 by Keystone's CEO. HOPE International provides small business loans and basic business training to individuals living in poverty. Since its founding, HOPE International has grown into a worldwide charitable organization currently serving approximately 1,000,000 active clients.

22. Keystone has developed a substantial portfolio of intellectual property in connection with the home design and construction services it provides. This portfolio includes, but is not limited to, the wide variety of architectural plans and designs it has authored and created.

23. Keystone has published portions of many of these plans and designs on its website, where visitors are free to view brochures for individual home designs. These brochures include illustrations of homes built using the individual designs featured in the brochure, along with portions of the architectural plans for those designs.

24. Each such brochure includes a copyright notice plainly identifying the contents of the brochure as copyright-protected material owned by Keystone.

Keystone's "Samson" Architectural Designs and Plans

25. Keystone has titled one set of the architectural designs it has created "Samson." Keystone owns all right, title and interest in and to the Samson designs and plans, and owns the exclusive right to build homes utilizing the Samson designs and plans.

26. Keystone completed the Samson designs and plans in 2005, and first published them – i.e., made homes utilizing such designs and plans available to the public for purchase – on January 31, 2005.

27. The Samson architectural work is of substantial commercial value to Keystone, and Keystone considers its right in the Samson designs and plans to be among the most valuable of its assets.

28. In or before January of 2006, Keystone published the Samson Brochure on its website. The Samson Brochure includes illustrations of homes built using the Samson designs, along with portions of the Samson architectural plans. (Exhibit B.)

29. The Samson Brochure includes a copyright notice, and plainly identifies the contents of the brochure as copyright-protected material owned by Keystone. (Id.)

30. Keystone registered its copyright in the Samson architectural work with the U.S. Copyright Office under Registration No. VA 2-057-007. (Exhibit A.)

31. Below is an illustration, taken from the Samson Brochure, of a home built using Keystone's Samson architectural designs and plans:



32. Below is a photograph of a home built by Keystone utilizing the Samson design:



33. Below is an excerpt from Keystone's detailed architectural plans featuring the Samson design:



Hearthstone's Infringing Construction

34. In May of 2015, Keystone began working with potential buyers to design and build a custom home to be located in Douglassville, Pennsylvania.

35. These potential buyers selected the Samson designs for their prospective home, and Keystone thereafter spent many hours working to customize the Samson designs in order to prepare a derivative work that met these potential buyers' individual modification requests and specifications.

36. As part of the contract negotiation process between Keystone and these potential buyers, Keystone provided them with a set of standard architectural plans for the home that Keystone proposed to build for them based upon the Samson designs.

37. The set of architectural plans Keystone provided to these potential buyers clearly and unambiguously identified those plans as belonging to and created by Keystone.

38. These potential buyers ultimately decided not to engage Keystone to construct their new home.

39. Upon information and belief, the potential buyers thereafter contracted with Hearthstone to construct the home that Keystone had designed.

40. Upon information and belief, the potential buyers provided Hearthstone with the Samson architectural plans that Keystone had given them during the prior negotiation process.

41. Moreover, during this time the Samson Brochure was publically available on Keystone's website.

42. Hearthstone accordingly had access to Keystone's copyright-protected Samson plans and designs through either the plans Keystone had provided to the potential buyers, the Samson Brochure, or both.

43. Hearthstone, under the direction and control of Naso, then constructed the home that Keystone had designed, using Keystone's copyright-protected Samson designs and plans.

44. Below is a photograph of the infringing home that Hearthstone constructed using the Samson designs and plans:



45. In addition to constructing this infringing home, Hearthstone prominently features the below photograph of its infringing construction on the homepage of its website¹ in an apparent effort to attract new customers to its business by further exploiting the value of Keystone's Samson design:



¹ See: <http://www.hearthstonehomesinc.com/>

46. For direct comparison, below is a photograph of a home built by Keystone using the copyrighted Samson design, and a photograph of the infringing home Hearthstone constructed:

A Keystone-Constructed “Samson” Home



The Infringing Hearthstone-Constructed “Samson” Home



Defendants Have Infringed Plaintiff's Copyright

47. Hearthstone's construction identified above is either an exact copy of Keystone's Samson architectural designs and plans, or a nearly exact copy evidencing substantial similarity.

48. There can accordingly be no doubt that the Defendants have infringed Plaintiff's copyright.

49. To the extent that Defendants have constructed any other homes utilizing Keystone's Samson plans and designs, those constructions have infringed Plaintiff's copyright as well.

COUNT 1

COPYRIGHT INFRINGEMENT
(17 U.S.C. §§ 106 and 501)
(By Plaintiff Against Defendants)

50. Plaintiff incorporates by reference herein each and every paragraph set forth above as if fully set forth herein.

51. Plaintiff has a protected copyright interest in the architectural designs and plans it has titled "Samson," and owns the exclusive right to build homes utilizing the Samson designs and plans. See, e.g., 17 U.S.C. § 102(a)(8).

52. Through their conduct described herein – including but not limited to their construction and sale of a home utilizing Plaintiff's Samson designs and plans, along with their continued display on the Hearthstone website of an infringing construction utilizing Plaintiff's Samson design – Defendants have infringed and continue to infringe Plaintiff's copyright in the Samson design in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

53. Defendants' acts of infringement are willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

54. Plaintiff has been harmed as a direct and proximate result of Defendants' infringements, and Plaintiff is accordingly entitled to damages in an amount to be proven at trial.

55. Plaintiff is also entitled to Defendants' profits attributable to their infringements, pursuant to 17 U.S.C. § 504(b), including an accounting of and a constructive trust with respect to such profits.

56. Plaintiff is further entitled to its attorneys' fees and full costs pursuant to 17 U.S.C. § 505 and otherwise according to law.

57. As a direct and proximate result of the foregoing acts and conduct, Plaintiff has sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Plaintiff is informed and believes, and on that basis avers, that unless enjoined and restrained by this Court, Defendants will continue to infringe Plaintiff's rights in the Samson designs and plans. Plaintiff is accordingly entitled to preliminary and permanent injunctive relief to restrain and enjoin Defendants' continuing infringing conduct.

JURY TRIAL DEMANDED

58. Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, jointly and severally, as follows:

1. For damages in an amount in excess of \$150,000 or such amount as may be found, or as otherwise permitted by law.
2. For an accounting of, and the imposition of a constructive trust with respect to, Defendants' profits attributable to their infringement of Plaintiff's copyright in the Samson architectural work.
3. For a preliminary and permanent injunction prohibiting Defendants, and their respective agents, servants, employees, officers, successors, licensees and assigns, and all persons acting in concert or participation with each or any of them, from continuing to infringe

Plaintiff's copyright in the Samson architectural work through the marketing, sale, display, development, or construction of any home utilizing the Samson designs or plans.

4. For prejudgment interest according to law.
5. For Plaintiff's attorneys' fees, costs, and disbursements in this action.
6. For such other and further relief as the Court may deem just and proper.

Dated: November 15, 2017

Respectfully submitted,

/s/ Thomas B. Fiddler

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